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FILED

DEC 17 2009

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

9 STATE BAR COURT
10 HEARING DEPARTMENT-SAN FRANCISCO

11 In the Matter of) Case No. 05-O-04119-PEM; 06-O-14935 PEM;
12 STANLEY G. HILTON) 07-O-12717; 07-O-14195
13 State Bar No. 65990)
14 A Member of the State Bar) **RESPONSE TO NOTICE OF**
15) **DISCIPLINARY CHARGES**
16) [Rule of Procedure 262]
17)
18)
19)
20)
21)
22)

23 Respondent Stanley G. Hilton herewith responds to the Notice of Disciplinary
24 Charges in this case:

25 Respondent admits that he was admitted to the practice of law in California on
26 December 18, 1975, and was a member in good standing at all times set forth in the Notice
27 of Disciplinary Charges ("NDC"), but he denies that he is currently eligible to practice law
28 as he is on inactive status as of August 10, 2009, per order of the Hearing Department.

COUNT ONE (A) (Fogarty)
Case no. 08-O-13080
Violation of Rule 3-110(A)

1. Respondent denies that he willfully violated Rule of Professional Conduct 3-

RESPONDENT HILTON'S RESPONSE TO NOTICE OF DISCIPLINARY CHARGES



1 COUNT ONE (C) (Fogarty)
2 Case no. 08-O-13080
3 Violation of Rule 3-700(D)(2)

4 11. Respondent denies that he willfully violated Rule 30700(D)(2) by failing to
5 promptly refund any part of the fee paid in advance that was not earned.

6 12 and 13. Respondent hereby incorporates his responses to paragraphs 1-10 of this
7 Response as though fully set forth in this paragraph.

8 14. Respondent admits the allegations of this paragraph. To the extent that the
9 paragraph implies that respondent was obligated to refund any money, he denies that
10 implication.

11 15. Respondent denies that his services to Fogarty were worthless.

12 COUNT ONE (D) Fogarty)
13 Case no. 08-O-13080
14 Business & Professions Code section 6068(m)

15 16. Respondent denies that he willfully violated section 6068, subdivision (m), of the
16 Business and Professions Code by failing to keep his client reasonably informed of significant
17 developments in his representation of her.

18 17-19. Respondent hereby incorporates by reference all his responses in paragraphs
19 1-15 of this Response as though fully set forth in this paragraph.

20 20. Respondent denies that he was unavailable to Fogarty during the first week of
21 March 2008. Respondent has checked his records and there is no evidence that either his fax
22 machine or his telephone were out of service. It is possible that his fax machine ran out of
23 paper Respondent denies that he disabled his fax machine. Respondent had three telephone
24 lines, all of which were in service at the time he represented Fogarty, and he had given these
25 numbers to Fogarty. Additionally, Fogarty had the phone number for respondent's
26 independent paralegal, Melissa Carver.

27 21. Respondent admits that he and Melissa Carver met with Fogarty on March 30,
28

1 2008, to discuss the issue of their communications. Respondent explained to Fogarty that he
2 could not respond to every call Fogarty made or to every message she left, but he told her
3 that he would reasonably respond to her calls, and she agreed. Fogarty also agreed to call
4 Carver if she could not reach respondent. Respondent has no record of the number of
5 messages that Fogarty left for him in March, but he denies that he did not respond to any of
6 her messages or calls that month. He does admit, however, that he did not respond to all of
7 her calls and messages.

8 22. Respondent denies the allegations of this paragraph to this effect: he generally
9 responded to her messages, although he did not respond to all of them. Because Ms. Fogarty
10 was recovering from an operation and was not working at the time, her schedule was
11 changeable, and she did not keep respondent apprised of her whereabouts or her
12 appointments. Therefore, respondent had no way of knowing when Fogarty would be
13 unavailable, and he did not call her when he knew she would be unavailable. Moreover, this
14 allegation contradicts the earlier allegations that respondent did not return Fogarty's phone
15 calls. Obviously, Fogarty knew that respondent tried to reach her, because he left her
16 messages. Therefore, what appears to have happened was that respondent and Fogarty were
17 playing phone tag, not that respondent was unavailable or that he did not communicate with
18 Fogarty.

19 23. Respondent does not have sufficient information to admit or deny this allegation.

20 24. Respondent does not recall whether his voice mail on one of his telephone
21 numbers was full, but Fogarty had his other numbers and Carver's number and did not call
22 them.

23 25. Respondent denies the allegation of this paragraph.

24 26. Respondent denies the allegation of this paragraph.

25 27. Respondent denies that he failed to prepare Fogarty for the DMV hearing.

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18 Fogarty.

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21 numbers was full, but Fogarty had his other numbers and Carver's number and did not call
22 them.

23 25. Respondent denies the allegation of this paragraph.

24 26. Respondent denies the allegation of this paragraph.

25 27. Respondent denies that he failed to prepare Fogarty for the DMV hearing.
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27

28. Respondent denies the allegations of this paragraph. The hearing in court on the DUI was a pretrial conference at which a proposed settlement was going to be discussed. Fogarty was not required to give any testimony, and therefore there was no testimony for which respondent had to prepare Fogarty.

29. Respondent denies that he failed to respond to Fogarty's efforts at communications, denies that he failed to discuss with her the significant aspects of her DMV or DUI cases, and denies that he failed to respond to Fogarty's request for status reports and that he failed to keep her informed of significant developments in her case.

COUNT TWO (A) (Richerson)

Case no. 08-O-13110

Violation of Rule 3-110–Failure to Perform with Competence

30. Respondent denies that he intentionally, recklessly or repeatedly failed to perform legal services with competence.

31. Respondent admits that Richerson met with respondent about the time set forth, but denies the rest of the allegation because it was vague. Respondent admits that he agreed to provide the following legal services for Richerson: representation in a worker's compensation case and to provide general advice on his SSDI application and the subsequent denial. Respondent also advised Richerson to seek the assistance of an attorney who was familiar with Social Security procedures, as respondent was not..

32. Respondent admits that he suggested that Richerson submit a claim in his SSDI matter, but he denies that he filed the claim with Richerson. Richerson filled it out himself and submitted it himself.

33. Respondent has no independent knowledge of this allegation but he admits it based upon information and belief.

34. Respondent admits this allegation.

35. Respondent does not recall if he received this e-mail and he therefore cannot

1 admit or deny this allegation.

2 36. Respondent does not recall if he received this e-mail and he therefore cannot
3 admit or deny this allegation. However, respondent admits that he prepared and submitted to
4 SSDI an appeal for Richerson.

5 37. Respondent does not recall if he sent such an e-mail but he admits that he so
6 advised Richerson orally over the telephone.

7 38.. Respondent denies that he did not try to file an appeal on Richerson's behalf in
8 the SSDI matter. However, respondent admits that Social Security informed him it had not
9 received the appeal, and respondent admits that he did not resubmit it.

10 39. Respondent admits that failed to successfully file an appeal for Richerson. He
11 contends that he advised Richerson that he had the right to re-appeal. Respondent admits that
12 by failing to follow up on the notice from Social Security that it had not received the appeal,
13 he acted negligently. Respondent will leave it to the decision-making power of the court to
14 determine if this constitutes "intentionally, recklessly and repeatedly failing to perform legal
15 services with competence."

16 COUNT TWO (B) (Richerson)

17 Case no. 08-O-13110

18 Bus. & Prof. Code §6068(m) (failure to inform client)

19 40. Respondent denies that he failed to keep Richerson informed of significant
20 developments in his representation.

21 41. Respondent's incorporates his responses to paragraphs 1-39 in this paragraph as
22 though fully set forth here.

23 42. Respondent denies the allegation of this paragraph, and points out that this
24 allegation is contradicted by the allegation of paragraph 37 in which it is alleged that he
25 informed Richerson that Social Security failed to get the appeal.

26 43. Respondent denies that he failed to keep Richerson informed of a significant
27

1 development in his case.

2 COUNT THREE (A) (Bahari)

3 Case no. 08-O-11448

4 Bus. & Prof. Code §6068(m)

5 44. Respondent denies that he violated Business & Professions Code section 6068(m)
6 as alleged.

7 45. Respondent admits the allegations of this paragraph except as to the date. He
8 first met with Bahari in December 2004 and January 2005, not January 2004.

9 46. Respondent admits the allegations of this paragraph as stated. However, to the
10 extent these allegations imply that he continuously represented Bahari in her employment
11 matter he denies such implication, as she had another attorney between February and July,
12 2005.

13 47. Respondent admits the allegations of this paragraph, but denies any implication
14 that he failed to properly name either Bahari or the defendant at all in the complaint.

15 48. Respondent admits the allegations of this paragraph.

16 49. Respondent admits that he did not serve the complaint and that he did not tell
17 Bahari that it had not been served, but he denies that the time within which he had to serve
18 the federal complaint had passed before Bahari fired him and hired attorney Mayo.
19 Therefore, respondent had no duty to inform Bahari that the complaint had not yet been
20 served.

21 50. Respondent admits that he did not communicate with Bahari from the time she
22 fired him in mid-February 2005 until just before she rehired him. As she was no longer his
23 client and she was a represented party in the case, he had an obligation NOT to communicate
24 with her without first going through her attorney, Mayo. Moreover, Mayo instructed
25 respondent not to contact Bahari while he (Mayo) represented her. Respondent also denies
26 the allegation to the effect that Bahari fired respondent because she had trouble
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1 communicating with him. In fact, the allegations establish that first she fired respondent and
2 hired a new attorney, then she complained that he was not communicating with her, then she
3 fired Mayo and rehired respondent. As there is no allegation that Bahari had trouble
4 communicating with respondent during the time he represented her, he denies that he failed
5 to communicate with her on a reasonable basis.

6 51. Respondent denies that he failed to keep Bahari informed of significant
7 developments in his representation of her.

8 COUNT THREE (B) (Bahari)

Case no. 08-O-11448

9 Bus. & Prof. Code section 6016 (moral turpitude)

10 52. Respondent denies that he willfully violated Business and Professions Code
11 section 6106 by committing an act of moral turpitude, dishonesty and corruption.

12 53. Respondent incorporates by reference his responses to paragraphs 44-51 in this
13 paragraph as though fully set forth herein.

14 54. Respondent denies that he asked Bahari to sign a Verification for the Opposition
15 to the Motion for Summary Judgment. There is no requirement that a party opposing a
16 motion for summary judgment must sign a verification. Verifications are used for responses
17 to written discovery. In an effort to try to address this allegation, respondent will assume
18 that what the State Bar means is that he asked Bahari to sign a Declaration under penalty of
19 perjury. He admits that he asked her to do so, but he denies that he withheld or failed to
20 show her documents on which her declaration relied until after she had signed it.

21 55. Respondent denies that he made an unauthorized charge to Bahari's credit card.
22 He made one such charge, a charge that she had authorized, to serve as an advance on the
23 costs of depositions. Bahari notified respondent within a few of weeks that she had changed
24 her mind and wanted respondent to reverse the charge. Respondent denies that Bahari
25 threatened to go to the police about the charge. Respondent admits that, upon receiving her
26

1 instructions to reverse the charge and not take the depositions, he reversed the charge.

2 56. Because respondent denies the predicate acts on which this allegation is based, he
3 denies that he committed an act or acts of moral turpitude, dishonesty and corruption.

4 COUNT FOUR (A) (Damon)

5 Case no. 08-O-14082

6 Bus. & Prof. Code section 6068(b)

7 57. Respondent admits that he failed to maintain the proper respect for the courts and
8 his opposing counsel by the actions alleged in the NDC.

9 58. Respondent admits this allegation.

10 59. Respondent admits this allegation.

11 60. Respondent admits the allegations of this paragraph.

12 61. Respondent admits the allegations of this paragraph.

13 62. Respondent does not recall whether he received such a letter and therefore is
14 unable to admit or deny this allegation.

15 63. Respondent admits the allegations of this paragraph.

16 64. Respondent admits the allegations of this paragraph.

17 65. Respondent admits the allegations of this paragraph.

18 66. Respondent admits the allegations of this paragraph.

19 67. Respondent denies that he falsely claimed not to have received the motion to
20 transfer by January 15, 2009, although when he informed opposing counsel, that counsel sent
21 him a new copy.

22 68. Respondent admits filing an opposition to the motion to transfer, but denies that
23 he knew or should have known that his claim that he had not received the motion originally
24 was false.

25 69. Respondent admits that the court granted the motion to transfer.

26 70. Respondent denies that he was attempting to circumvent the Santa Cruz County
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1 Superior Court's order disqualifying him. His client insisted that he refile the case in Santa
2 Clara County where she believed that the court would not be prejudiced against her.
3 However, he admits that he should not have filed such a complaint for Ms. Byrum because
4 he had previously been disqualified, and he admits that when he filed such a complaint, he
5 should have advised the Santa Clara County Superior Court of the Santa Cruz County
6 Superior Court's ruling, and that the case was basically the same as had been dismissed
7 earlier.

8 71. Respondent admits the allegations of this paragraph.

9 COUNT FOUR (B) (Damon)

Case no. 08-O-14082

10 Bus. & Prof. Code section 6068(c) (unjust action)

11 72. Respondent admits that he violated Business and Professions Code section
12 6068(c) by failing to counsel or maintain only such actions as appear to him to be legal or
13 just.

14 73. Respondent hereby incorporates by reference his responses to the allegations in
15 Count Four (A), paragraphs 57-71..

16 74. Respondent admits the allegations of this paragraph.

17 75. Respondent incorporates his response to paragraph 70 as though fully set forth
18 here. He did not file the Santa Clara case to circumvent the ruling of the Santa Cruz County
19 Superior Court, but he admits that he never should have filed the lawsuit in Santa Clara
20 County, that he should not have agreed to file it on Bynum's behalf and should have advised
21 her not to file the case in Santa Clara County, and he admits that he should, at a minimum,
22 have advised the Santa Clara County Superior Court of the actions of its sister court in Santa
23 Cruz, and that the two lawsuits were basically the same.

24 76. Even though respondent did not file the lawsuit to circumvent the court's ruling
25 disqualifying him, he admits that his action was to maintain an unjust action or proceeding.
26
27

1 COUNT FOUR (C) (Damon)

2 Case No. 086-O-14082

3 Bus. & Prof. Code section 6103 (Failure to Obey Court Order)

4 77. Respondent admits that he willfully violated Business and Professions Code
5 section 6103 by disobeying a court order.

6 78. Respondent incorporates by reference his responses to Count Four (A),
7 paragraphs 57-71, as though fully set forth here.

8 79. Respondent admits the allegations of this paragraph.

9 80. Respondent admits that he disobeyed a court order by failing to pay the
10 sanctions.

11 COUNT FOUR (D) (Damon)

12 Case No. 08-O-14802

13 Bus. & Prof. Code section 6106

14 81. Respondent denies that he violated Business and Professions Code section 6106
15 by committing an act of moral turpitude, dishonesty and corruption.

16 82. Respondent incorporates his responses to paragraphs 57-71 of this Response as
17 though fully set forth herein.

18 83. Respondent does not recall whether he received such a letter and therefore he is
19 unable to either admit or deny this allegation.

20 84. Respondent admits this allegation.

21 85. Respondent admits the allegations of this paragraph.

22 86. Respondent admits the allegations of this paragraph.

23 87. Respondent admits the allegations of this paragraph.

24 88. Respondent denies the allegations of this paragraph.

25 89. Respondent denies that he had received a copy of the motion before January 15,
26 2009. He denies that he knew or should have known that his claim that he had not received
27 it was false.

1 90. Because respondent denies the predicate allegations upon which this conclusion is
2 based, respondent denies that he violated section 6106 by committing an act of moral
3 turpitude, dishonesty and corruption.

4 COUNT FOUR (E) (Damon)

5 Case no. 08-O-14802

6 Bus. & Prof. Code section 6068(d) (misleading a judge)

7 91. Respondent denies that he willfully violated Business and Professions Code
8 section 6068, subdivision (d), by misleading the judge or a judicial officer.

9 92 and 93. Respondent incorporates his responses to paragraphs 57-71 and 81-90 of
10 Counts Four (A) and (D) as though fully set forth in this response.

11 94. Respondent denies that he made a false statement in regard to having received the
12 motion to transfer, and he therefore denies that he sought to mislead a judge by an artifice or
13 a false statement of fact or law.

14 COUNT FIVE (A) (Ruiz)

15 Case no. 09-O-10410

16 Violation of Rule 3-110 (competence)

17 95. Respondent denies that he intentionally, recklessly and repeatedly failed to
18 perform legal services with competence in violation of Rule of Professional Conduct 3-110 as
19 alleged.

20 96. Respondent admits the allegations of this paragraph.

21 97. Respondent admits the allegations of this paragraph.

22 98. Respondent admits that he filed case no. 1-08-CV-107127, but he denies that the
23 allegations arose out of the same set of facts as set forth in case no. 1-08-CV-036923. The
24 later case was based on defamatory remarks unrelated to the original action.

25 99. Respondent admits the allegations of this paragraph. Ruiz was in Mexico,
26 refused to give respondent his telephone number or contact information, and refused to pay
27 respondent's fees and costs.

100. Respondent admits the allegations of this paragraph. To the extent that these allegations imply that he was empowered to file an appeal on behalf of Ruiz, respondent denies such an implication. Ruiz hired a new attorney who substituted in for respondent during the time that the appeal could have been filed.

101. Respondent admits the allegations of this paragraph.

102 Respondent denies that he failed to perform legal services with competence. Ruiz failed to communicate with respondent, failed to pay his fees and costs, and refused to take respondent's advice to dismiss his complaint for a waiver of fees and costs when the Anti-Slapp motion was pending against him.

COUNT FIVE (B) (Ruiz)

Case no. 09-O-10410

Bus. & Prof. Code section 6068(m) (failure to communicate)

103 Respondent denies that he willfully violated Business and Professions Code section 6068, subdivision (m), by failing to keep his client reasonably informed of significant developments in the case.

104 Respondent incorporates by reference his responses to paragraphs 95-102.

105. Respondent denies that he failed to inform Ruiz when the case had been dismissed. Ruiz then hired a new attorney who took over the case for respondent with enough time to file a Notice of Appeal.

106. Respondent denies the allegations of this paragraph.

107. Respondent denies the allegations of this paragraph.

108. Respondent denies the underlying allegations forming the basis of this conclusion, and he therefore denies that he failed to keep a client reasonably informed of significant developments in the case.

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COUNT FIVE (C) (Ruiz)

Case no. 09-O-10410

Bus. & Prof. Code section 6068(d) (misleading a judge)

109. Respondent denies that he violated Business & Professions Code section 6068, subdivision (d), by lying to or misleading a judge.

110. Respondent incorporates by reference his responses to paragraphs 95-102 of Count Five (A) as though fully set forth in this response.

111. Respondent admits the allegations of this paragraph. To the extent that this paragraph implies that respondent received the moving papers in a timely fashion, he denies that implication.

112. Respondent denies that his statement to the court about when he received the moving papers was false, or that he should have known it was false.

113. Because respondent denies the predicate allegations on which this conclusion is based, respondent denies this conclusion.

AFFIRMATIVE DEFENSES/FACTORS IN MITIGATION:

Respondent hereby asserts the following affirmative defenses and factors in mitigation:

First, simple negligence is not a proper basis for the imposition of discipline, and respondent's actions in relation to Count Two (A) constitute no more than simple negligence.

Second, any failure of respondent to keep Ruiz informed of developments in his case is excused by the fact that Ruiz moved to Mexico and did not keep respondent apprised of his address or telephone number.

Third, respondent has a lengthy history of practicing law without any disciplinary action being imposed upon him.

Fourth, during the time periods alleged in this Amended NDC, respondent was suffering severe emotional and mental distress as a result of a contentious divorce proceeding

1 that included threats of physical violence against him and his children, physical violence
2 against respondent's property, and threats to prevent him from ever seeing his children again,
3 and this mental and emotional distress substantially contributed to the acts and omissions that
4 are complained of in the Amended Notice of Disciplinary Action.

5 Fifth, during the time periods alleged in this NDC respondent was suffering from bi-
6 polar disorder and this disorder substantially contributed to the acts and omissions that are
7 complained of in the NDC, and respondent is currently receiving treatment at this time and
8 the disorder is treatable.

9 Respondent reserves the right to call character witnesses in his defense at the trial of
10 this matter.


11 Respondent reserves the right to present evidence of other mitigating factors not set
12 forth in this Response to the Amended Notice of Disciplinary Charges.

13 NOTICE OF ADDRESS FOR SERVICE:

14 All pleadings, communications, and other items to be sent to respondent should be sent to his
15 attorney:

16 William M. Balin
17 Balin & Kotler, LLP
18 345 Franklin Street
19 San Francisco, CA 94102
20 (415) 241-7360

21 Dated: December 17, 2009



William M. Balin
BALIN & KOTLER, LLP
Attorneys for Respondent Stanley G.
Hilton

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1. I am a citizen of the United States, over the age of 18, and not a party to the withing action. My business address is 345 Franklin Street, San Francisco, CA 94102.

Sherrie B. McLetchie
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WILLIAM M. BALIN